

Lessons Learned Series¹: Making Strides Toward UK Anti-SLAPP Law and Crackdown on Attorneys who bring SLAPP suits

In recent years, the EU and UK governments have become more attuned to the significant harm SLAPP suits cause to human rights and the rule of law. With the issuance of the EU Model Anti-SLAPP law by the European Commission on April 27, 2022, the continent appears poised to address this unique form of judicial harassment with legislation by 2023-24. However, between the war in Ukraine and the unabashed use of the London court system by Russian oligarchs hellbent on punishing anyone (British citizen or not) who speaks the truth about their ties to Putin or corruption, the UK is actually moving at breakneck speed to fast-track Anti-SLAPP legislation of its own. On January 24, 2023, Conservative MP Bob Seely introduced private member [legislation](#) in the House of Commons. Looking back at the advancements made in the UK over the last year is truly inspiring and provides lessons for all who are working to pass Anti-SLAPP laws at a state, federal, or country level.

Propelling the UK into Action

Before looking forward, it's worth taking a few minutes to look back. The first UK Anti-SLAPP Conference was held November 22-23, 2021, where [seven panels were presented](#) and a light was shone on the problem of SLAPPs. See https://www.youtube.com/watch?v=smn4FZ-L5bM&list=PLkyoi4eRgiLabgBVicIFcj_wL7-JRA_3-&index=5.

Despite being a well-known haven for defamation plaintiffs, the UK did not begin taking a serious look at this form of judicial harassment until the war in Ukraine began, and it saw the ways in which London law firms, as hired guns of oligarchs, were suppressing the narrative surrounding Putin's Russia through the UK court system. It was then that the UK was forced to look inward at how it had catered to Russian oligarchs (and others) who were now using the UK judicial system to harass and silence investigative journalists who uncover the sources of their dirty money, tax havens, and corrupt activities.²

In fact, high-profile cases like those against journalist Catherine Belton and her publisher Harper Collins by Russian oligarch Roman Abramovich over the book "*Putin's People: How the KGB Took Back Russia and then Took on the West*,"³ and those brought against journalist Tom Burgis and his publisher the Financial Times by Eurasian Natural Resource Corp. (ENRC) over the book "*Kleptopia: How Dirty Money is conquering the World*," clearly demonstrate how those in power were using their ill-gotten gains to silence truth tellers as a direct affront to democracy.

¹ This is the first in a series of articles written by Laura Prather, Chair of Media and Entertainment Practice Group at Haynes Boone, about things she learned as a Fulbright Scholar last Fall researching, advocating, and raising awareness of SLAPPs in the EU, UK, and US. A comparative analysis of her work will be published in the near future.

² The CASE report, *Shutting Out Criticism: How SLAPPs Threaten European Democracy*, most of the cross-border cases involving forum shopping were recorded in the United Kingdom. <https://static1.squarespace.com/static/5f2901e7c623033e2122f326/t/6231bde2b87111480858c6aa/1647427074081/CASE+Report+on+SLAPPs+in+Europe.pdf>, fn. 9 at 23.

³ Another lawsuit over the same book was filed by Russian state-owned energy company, Rofsnet.

The carnage does not end with best-selling authors who reside in the UK like Belton and Burgis; the UK has proven to be the jurisdiction of choice for the most Anti-SLAPP cross-border cases filed between 2010-2021.⁴ Recently, a U.S. investigative journalist with *Forensic News*, Scott Stedman, was sued in the UK based on a meager six subscriptions stemming from the jurisdiction. He was sued by British-Israeli security consultant and businessman, Walter Soriano, after reporting on alleged ties to Russian oligarch, Oleg Deripaska.⁵

Confronted by the stark reality that the UK judicial system was being abused by powerful individuals fueled by dirty money, on January 20, 2022, the UK Parliament held a debate on “[Lawfare and the UK Court System](#).” Shortly thereafter, on March 17, 2022, the UK Ministry of Justice issued a Call for Evidence on Strategic Lawsuits Against Public Participation (SLAPPs). After receiving 120 responses to its Call for Evidence, on July 20, 2022, the Ministry issued its Response.⁶

Like the European Union, the UK Ministry of Justice recommended much needed reform to stymie this form of judicial harassment (aka “Lawfare”). In broad strokes, the report mandates the UK Parliament develop a statutory early dismissal process and costs protection scheme to fight against SLAPP suits.

Amazingly, on January 24, 2023, MP Bob Seely used the 10-minute rule [to introduce an Anti-SLAPP bill](#) as private member legislation in the House of Commons. The bill is predominantly based on a [Model Bill](#) prepared by the UK Anti-SLAPP Coalition. The bill is due for a second reading on March 24.

Holding Lawyers to Account: Solicitors Regulation Authority Guidance

Last Spring, the UK Solicitors Regulation Authority (“SRA”) also began taking an interest in lawyers’ roles in propagating SLAPPs through legal threats and/or the filing of lawsuits. The SRA was keenly aware that often the legal threat alone stops the publication. This can be further complicated through the unilateral labelling of the pre-suit correspondence as “private and confidential.” Through such labeling, the SLAPP filer seeks to create silos of silence where victims, the government, and the public at large are not aware of the pattern of abuse.

On March 4, 2022, the SRA issued Guidance to help lawyers understand their ethical obligations and the application of the Principles and Codes of Conduct, as well as to highlight the different duties attorneys owe to the court, to clients, and to third parties (such as witnesses and opponents) in litigation.⁷ It clarified the conduct which would attract regulatory sanctions when dealing with disputes. Although the Guidance discussed SLAPPs, describing them as “the misuse

⁴<https://static1.squarespace.com/static/5f2901e7c623033e2122f326/t/6231bde2b87111480858c6aa/1647427074081/CASE+Report+on+SLAPPs+in+Europe.pdf>, p. 23, fn. 43.

⁵ <https://ipi.media/lawsuit-brought-against-forensic-news-and-scott-stedman-deemed-a-slapp/>.

⁶ Ministry of Justice, *Strategic Lawsuits Against Public Participation (SLAPPs): Government Response to the Call for Evidence*, (July 20, 2022) - https://data.parliament.uk/DepositedPapers/Files/DEP2022-0625/SLAPPs_Call_for_Evidence_Response_web.pdf.

⁷ <https://www.sra.org.uk/solicitors/guidance/conduct-disputes/>.

of the legal system, and the bringing or threatening of proceedings, in order to discourage public criticism or action,”⁸ it did not change any professional responsibilities.

The Guidance reminded attorneys of their guiding principles, including to uphold the constitutional principle of the rule of law and the proper administration of justice in a way that encourages public trust and confidence in the profession, to act with independence, honesty, and integrity, and to act in the best interest of each client. The overarching message conveyed was, “should the principles come into conflict, those which safeguard the wider public interest take precedence over an individual client’s interests.”⁹

As Juliet Oliver, SRA General Council and Executive Director, explained lawyers “must not act as a hired gun for their client no matter what. The key ethical principles include obligations to promote the public interest and rule of law and to safeguard the independence and integrity of the legal profession. Where there is a conflict those principles, the public interest prevails over the principle to act in the best interest of your client.”¹⁰

Coordinated Campaign: Model Anti-SLAPP Law, Editorials, and SRA Warning

The second annual [UK Anti-SLAPP Conference](#) held on November 28-29, 2022 raised awareness and built resolve for seeing the UK Anti-SLAPP law come to fruition. It was also part victory lap for how far things have come in such a short time. The truly brilliant, coordinated campaign of events surrounding the conference kept it in the media spotlight through optimally timed editorials and utilizing conference deadlines to spur government officials into action.

In the days leading up to the conference, the UK Anti-SLAPP Coalition launched the Model Anti-SLAPP law in Parliament.¹¹ The Coalition, which includes English PEN, the Foreign Policy Center and Index on Censorship, published the model Anti-SLAPP law, endorsed by a collection of free speech and anti-corruption organizations, journalists, editors, publishers, lawyers, and other experts throughout the UK.¹² In its presentation, the Coalition outlined three conditions necessary for any law to be effective: (1) SLAPPS must be disposed of as quickly as possible in court, (2) the costs for SLAPP targets are kept to an absolute minimum, providing for a full indemnity, and (3) costs for SLAPP filers are sufficiently high to deter further SLAPPS, including award of exemplary damages where the claimant has exhibited particularly egregious conduct. The message was clear: Parliament does not need to waste any time, it has been provided with the necessary language, now it just needs to prioritize passage.

⁸ *Id.*

⁹ *Id.*

¹⁰ Juliet Oliver, UK Anti-SLAPP Conference, Panel 7, November 29, 2022.

<https://www.youtube.com/watch?v=1M4M98qRX4k&list=PLkyoi4eRgiLbpZtr3RgTE3ZqqMjcCCR4x&index=12>

¹¹ UK Anti-SLAPP Coalition: Model Anti-SLAPP Law. <https://www.englishpen.org/posts/campaigns/uk-anti-slapp-coalition-model-anti-slapp-law/#:~:text=The%20UK%20Anti%20DSLAPP%20Coalition,how%20this%20is%20fleshed%20out.>

¹² [https://www.indexoncensorship.org/2022/11/letter-to-justice-secretary-adoption-of-a-uk-anti-slapp-law/.](https://www.indexoncensorship.org/2022/11/letter-to-justice-secretary-adoption-of-a-uk-anti-slapp-law/)

Simultaneously, a series of Op Ed's ran, including ones from Parliamentary champion for the UK Anti-SLAPP law, MEP David Davis¹³ and Editorial Legal Director/Deputy General Counsel, News at *The Times*, Pia Sarma¹⁴.

On November 28, 2022, the UK Anti-SLAPP conference kicked off with eight panels (four on each day) covering topics such as:

- UK Anti-SLAPP reforms;
- Anti-SLAPP legislation pros & cons from a global perspective;
- Legal intimidation, legal ethics & the role of lawyers;
- SLAPPs in today's independent investigative media landscape;
- SLAPPED Too: What can be done to stop SLAPPs from preventing the reporting of sexual harassment;
- When a SLAPP is a SLAPP & defending yourself in the UK libel courts; and
- SLAPPs Solutions – what action can the UK take to address SLAPPs domestically and internationally?

<https://www.youtube.com/watch?v=CcKYd82xvmY&list=PLkyoi4eRgiLbpZtr3RgTE3ZqqMjcCCR4x&index=2>.

Conference planner, Susan Coughtrie, Director of the Foreign Policy Center, arranged for the participation of Juliet Oliver, SRA General Counsel and Executive Director. The day before Oliver appeared, the Solicitors Regulation Authority issued a Warning Notice expressly about SLAPPs.

“We expect you to be able to identify proposed courses of action (including pre-action) that could be defined as SLAPPs, or are otherwise abusive, and decline to act in this way. We expect you to advise clients against pursuing a course which amounts to abusive conduct, including making any threats in correspondence which are unjustified or illegal.”¹⁵

The Warning Notice was issued just before the panel on “[Legal intimidation, legal ethics & the role of lawyers](#),” chaired by MLRC member Mark Stephens.¹⁶ The panel focused on the impact of pre-suit demands, often labelled “confidential.” Panelist Dan Neidle (with Tax Policy Associates) spoke about the impact of [publishing a threatening lawyer letter](#), where his initial post that drew the legal complaint was read by 2000-3000 people and the lawyer letter that was marked

¹³ <https://www.theguardian.com/commentisfree/2022/nov/29/oligarchs-british-courts-law-slapps-lawsuits>.

¹⁴ <https://www.thetimes.co.uk/article/we-must-stem-attempts-to-threaten-freedom-of-speech-rcf0wt76s>.

¹⁵ <https://www.sra.org.uk/solicitors/guidance/slapps-warning-notice/>.

¹⁶ Alongside the Warning Notice, the SRA published a companion piece for SLAPP victims about how to make a report to the SRA and how to obtain legal support. <https://www.sra.org.uk/consumers/problems/fraud-dishonesty/legal-threats-solicitor/>.

“confidential and not for publication” that was published on the internet was read by 4 million people. Panelist Caoilfhionn Gallagher KC, Doughty Street Chambers Barrister, focused her comments on pre-action letters sent to multiple publications creating silos of silence where one cannot detect there is a pattern of abuse.

The next day in Session 7: “[What are the practical steps media, and publishers, should take to push back against SLAPPs? panel](#),” Juliet Oliver explained in detail the Warning Notice that was issued the day before. She explained the red flags or features commonly associated with SLAPPs and the litigation conduct that is cause for concern and will likely result in regulatory action. The Notice gives guidance to attorneys on various questions they should be asking to satisfy themselves that a claim is properly arguable before bringing it. The Notice also warns against misleading labels on correspondence (*i.e.* “strictly private and confidential” when such labels are not justified).

Oliver explained that attorneys have an affirmative obligation to promote the public interest and rule of law. The SRA currently has a dedicated team looking into SLAPPs, and they have 29 open matters investigating 17 firms. They are also doing a thematic review and visiting a sampling of 25 firms that do reputation management to help figure out next steps about areas to avoid and good practices. The SRA will publish the results of this thematic review later this year.

At the conclusion of the conference, a letter was presented to Justice Secretary, Dominic Raab, urging support of the Model UK Anti-SLAPP law signed by 70 leading editors, journalists, publishers, lawyers, SLAPP victims, and other experts in support of the Model Law.

UK Anti-SLAPP Legislation Introduced in The House of Commons

Less than two months after the conference and its coordinated campaign, and on January 24, 2023, MP Bob Seely [introduced Anti-SLAPP legislation](#) as a private member bill in the House of Commons. Seely said the bill contains an early dismissal mechanism such that claims will only progress if they are likely to succeed and there is a public interest in doing so. Seely used his parliamentary privilege to describe specific cases, including those against Belton, Burgis, and Eliot Higgins, and also to label bad actors in the legal profession. He identified law firms by name – including Schillings, Carter Ruck, Mishcon de Reya LLP, Quinn Emanuel Urquhart & Sullivan LLP, and Boies Schiller Flexner LLP – for offering “legalized gangsterism” and a “one-stop corruption shop” for organized crime, oligarchs and their proxies. “These high-priced law firms, through naivety, poor judgment or simple greed, are becoming a fifth column,” he said. “They are the tools by which the enemies of law-governed states – whether criminals, oligarchs, their fellow travelers or simple foreign fascists – undermine our society and [our values.]”